IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Pradeep Kumar Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.212/2006)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 22-2-2006 in Sessions Case No.44/2005 passed by Sh. Ashok Kumar Saxena, RHJS, Additional Sessions Judge (Fast Track) No.3 Bundi.

Date of Judgment: May 30, 2007.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. J.K.Singhi] for the appellant.
Mr. R.P.Singh]
Mr. S.Khandelwal]
Mr. Anuroop Singhi]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

After dismissal of two applications, the appellant moved third application under section 389 CrPC on the ground that since he had already served out sentence for a period of two years and five months and hearing of appeal in near future was not possible, he be released on bail. I, instead of passing any order on the application, decided to dispose of the appeal itself and that is how the matter has come up for hearing.

2. The appellant was put to trial before the learned Additional Sessions Judge (Fast Track) No.3, Bundi, who vide judgment dated February 22, 2006 convicted and sentenced him as under:-

U/s.376 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.10000/-, in default to further suffer simple imprisonment for six months.

U/s.341 IPC:

To suffer rigorous imprisonment for three years and fine of Rs.3000/-, in default to further suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

3. It is the prosecution case that on January 17, 2005 informant Ganesh Lal submitted a written report (Ex.P-1) at Police Station K.Patan to the effect that on the said day around 9 PM his daughter Guddi, aged 11 years, who went out of the house to drag away the cow, was made to sit in his room by Pradeep Mali (appellant). On hearing alarm of Guddi, Jagan Nath went to the room and took Guddi out of the room. Pradeep threatened the informant of dire consequences and from him the informant and his daughter had apprehension that he might kill them. The SHO directed Gokul Ram ASI to make an inquiry about the incident. Again on January 18, 2005 another report (Ex.P-2) was lodged by Ganesh Ram with the averments that in fact his daughter was raped by Pradeep but he could not incorporate this fact in the first report because of fear. On that report a case was registered and investigation commenced. Necessary memos were drawn, statements of witnesses under section 161 CrPC were recorded, appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.3 Bundi. Charges under sections 363 and 376 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 10 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. One witness in

defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

4. Learned counsel for the appellant in the process of assailing the impugned finding took me through ocular and documentary evidence. Having carefully scanned the material on record, I find the factual situation as under:-

(i) Two reports of alleged incident were filed by the informant. In the first report allegation of rape was not mentioned.
(ii) The prosecutrix although in her deposition stated that she was raped twice, no injury was found on her private parts.
(iii) Informant Ganesh Lal is an illiterate person. That is why he put thumb impression on his statement recorded at the trial. However the Admission Form (Ex.P-10A) of Guddi submitted in the school, bears the signatures of Ganesh Lal.
(iv) Age of Guddi was not determined by radiological examination. Request of the appellant for determination of her age radiologically, was turned down by the trial court.
(v) The prosecution established the age of Guddi as 11 years on the basis of school certificate.

5. It is well settled that the school certificate cannot be accepted as final say in the matter of age and the investigating agency is duty bound to determine the age of prosecutrix radiologically. In Ranjeet Singh Vs. State [1999 Cr.L.R. (Raj.) 397] it was indicated that the School Certificate cannot be accepted as a final say in the matter of age. Since the Investigating

Agency did not permit radiological examination of prosecutrix, the accused was deprived of his valuable right in the matter of determination of age of the prosecutrix.

6. In so far absence of injuries on the body of prosecutrix is concerned, it is a strong circumstance to put the prosecution story under the shadow of doubt. In Sujan Singh vs. State (1991 RCC 159) this Court indicated that absence of injuries on the body of the prosecutrix make out a very strong circumstance to make her story improbable.

7. In Yerumalla Latchaiah Vs. State of AP (2006)9 SCC 713, their Lordships of the Supreme Court indicated thus:- (Para 3)

> "In the present case, age of the victim was only eight years at the time of alleged occurrence. Immediately after the occurrence, she was examined by Dr.K.Sucheritha (Pw.7) who has stated in her evidence that no injury was found on any part of the body of the victim, much less on private part. Hymen was found intact and the doctor has specifically stated that there was no sign of rape at all. In the medical report, it has been stated that vaginal smears collected and examined under the microscope but no sperm detected. The evidence of the prosecutrix is belied by the medical evidence. In our view, in the facts and circumstances of the present case, the High Court was not justified in upholding the conviction."

8. It is well settled in law that conviction for offence of rape can be based on the sole testimony of the prosecutrix if it is reliable, unimpeachable and there is no infirmity. The testimony of the prosecutrix is required to be appreciated in the back ground of entire case. The onus to prove that the accused committed sexual intercourse with prosecutrix without her consent and against her will as laid down in section 375 IPC is

on the prosecution.

9. From the judicial decisions rendered by the Apex Court the law as regards the credibility of the testimony of prosecutrix may be summarized thus:-

> (i) There is no rule of law that corroboration is essential before there can be a conviction solely on the testimony of the prosecutrix. But as a matter of prudence, the necessity of corroboration must be present to the mind of the Judge.
> (ii) There may be circumstances in a given case which might make it safe to dispense with such a corroboration.
> (iii) On the other hand, there may be factors in a case tending to show that the testimony of the prosecutrix suffers from infirmities in a manner so as to make it either unsafe or impossible to base a finding of guilt to the same. Some of the salient factors of this type may briefly be stated thus:-
>
> (a) circumstances showing on the part of prosecutrix an animus against the accused;
> (b) where the question of want of consent is material, circumstances tending to show consent: e.g., absence of material showing an attempt at resistance; absence of any marks of struggle;
> (c) attempt at improvement or exaggeration in the version as attempted by the prosecutrix;
> (d) conduct on the part of the prosecutrix, inconsistency with the credibility of the version e.g., omission to make a disclosure at the earliest opportunity;
> (e) element of artificiality or unnaturalness in the story as attempted by the prosecutrix, and
> (f) absence of signs of rape in the findings of the medical examination or on chemical analysis.
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> (Emphasis supplied)

10. In the case on hand as already noticed the prosecutrix omitted to make a disclosure about rape at the earliest opportunity and that is why the

allegation of rape had not been incorporated in the first written report (Ex.P-1). Even in the medical examination of the prosecutrix signs of rape were not noticed. The Admission Form of the prosecutrix (Ex.P-10A) appears to be a forged document as it bears the signatures of Ganesh Lal (Father of prosecutrix), who is an illiterate person and puts his thumb impression only. In absence of radiological examination of prosecutrix it is difficult to believe that prosecutrix was 11 years of age on the date of incident.

11. The prosecution story in view of infirmities noticed by me does not inspire confidence and the guilt of the appellant could not be proved by the prosecution beyond a reasonable doubt.

12. For these reasons, I allow the appeal and set aside the impugned judgment dated February 22, 2006 of the learned Additional Sessions Judge (Fast Track) No.3 Bundi. I acquit appellant Pradeep Kumar of the charges under sections 363 and 376 IPC. Appellant Pradeep Kumar, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Shiv Kumar Sharma)J.

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